

REMARKS

The Office Action mailed March 1, 2007, has been carefully reviewed and the foregoing amendment has been made in consequence thereof.

Claims 1-20 are pending in this application. Claims 1-20 stand rejected.

The rejection of Claims 1 and 8 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 2,529,267 to Sloane (hereinafter referred to as "Sloane") is respectfully traversed.

Sloane describes a collapsible container (C) having a bottom wall and four walls including two longitudinal walls and two end-walls. The longitudinal walls include vertical rods (2) and longitudinal rods (1) having end-loops (1a). Each end-wall includes an edge-frame (3) that is hooked by the end-loops (1a) of the longitudinal walls in order to connect the walls to each other. The end-loops (1a) engage vertical legs of the respective edge-frames (3) and serve as pivot loops to allow the container (C) to pivotally move to a collapsed position when the bottom wall is upturned. Notably, Sloane does not describe or suggest a slot defined in a side wall configured to receive a projection of the front wall such that the projection is movable within the slot to move the front wall with respect to the back wall.

Claim 1 recites a dishwasher rack basket assembly including "a collapsible basket of open mesh construction comprising a plurality of walls, said plurality of walls comprising: a back wall, a front wall including at least one projecting slide portion, said front wall substantially parallel with said back wall and a longitudinal axis of said collapsible basket, and a plurality of side walls connecting said back wall to said front wall, each of said side walls including a front wall end, a back wall end opposite said front wall end, and defining at least one slot extending between said front wall end and said back wall end, said at least one projecting slide portion slidably positioned within a corresponding slot of said at least one slot, said at least one projecting slide portion moveable within said corresponding slot such that said front wall moves with respect to said back wall along a transverse axis substantially perpendicular to said longitudinal axis to position and transform said basket between a first size and a second size, said first size securing small items while permitting flow of liquid

therethrough, said second size smaller than said first size and not securing small items while permitting flow of liquid therethrough.”

Sloane does not describe or suggest a dishwasher rack basket, as recited in Claim 1. More specifically, Sloane does not describe or suggest a dishwasher rack basket having a collapsible basket including side walls defining at least one slot extending between a front wall end and a back wall end, and at least one projecting slide portion of the front wall slidably positioned within a corresponding slot and moveable within the corresponding slot such that the front wall moves with respect to the back wall along a transverse axis substantially perpendicular to a longitudinal axis of the basket to position and transform the basket between a first size and a second size, as required by Applicant’s claimed invention. Rather, Sloane merely describes end-loops (1a) that engage vertical legs of respective edge-frames (3) and serve as pivot loops to allow the container (C) to pivotally move to a collapsed position when the bottom wall is upturned.

Accordingly, for at least the reasons set forth above, Claim 1 is submitted to be patentable over Sloane.

Claim 8 depends directly from independent Claim 1. When the recitations of Claim 8 are considered in combination with the recitations of Claim 1, Applicant respectfully submits that dependent Claim 8 likewise is patentable over Sloane.

For at least the reasons set forth above, Applicant respectfully requests that the Section 103 rejection of Claims 1 and 8 be withdrawn.

The rejection of Claims 2-5 under 35 U.S.C. § 103(a) as being unpatentable over Sloane in view of U.S. Patent No. 4,732,291 to McConnell (hereinafter referred to as “McConnell”) is respectfully traversed.

Sloane is described above. McConnell shows, in Figures 1 and 2, a non-collapsible dishwasher enclosure assembly (11) including a retractable upper lid (13) and a retractable lower lid (15). Notably, McConnell does not describe or suggest a slot defined in a side wall configured to receive a projection of the front wall such that the projection is movable within the slot to move the front wall with respect to the back wall.

Applicant respectfully submits that the Section 103 rejection of the presently pending claims is not a proper rejection. As is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. Neither Sloane nor McConnell, considered alone or in combination, describes or suggests the claimed combination. Further, contrary to the Examiner's allegations, Applicant respectfully submits that it would not be obvious to one skilled in the art to combine Sloane and McConnell because there is no motivation to combine the references suggested in the art. Moreover, the Examiner has not pointed to any prior art that teaches or suggests to combine the disclosures, other than Applicant's own teaching.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. Ex parte Levengood, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. Rather, some suggestion to combine such references and a reasonable expectation of success must both be found in the prior art, and not based on Applicants' disclosure. In re Vaeck, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991). In the present case, neither a suggestion nor motivation to combine the prior art disclosures, or any reasonable expectation of success has been shown.

Further, it is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the cited art so that the claimed invention is rendered obvious. Specifically, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the art to deprecate the claimed invention. Further, it is impermissible to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. The present Section 103 rejection is based on a combination of teachings selected in an attempt to arrive at the claimed invention. Since there is no teaching or suggestion in the cited art for the combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for this reason alone, Applicant requests that the Section 103 rejection be withdrawn.

Moreover, and to the extent understood, no combination of Sloane and McConnell describes or suggests a dishwasher rack basket assembly, as recited in Claim 1. More specifically, no combination of Sloane and McConnell describes or suggests a dishwasher rack basket having a collapsible basket including side walls defining at least one slot extending between a front wall end and a back wall end, and at least one projecting slide portion of the front wall slidably positioned within a corresponding slot and moveable within the corresponding slot such that the front wall moves with respect to the back wall along a transverse axis substantially perpendicular to a longitudinal axis of the basket to position and transform the basket between a first size and a second size, as required by Applicant's claimed invention. Rather, Sloane merely describes end-loops (1a) that engage vertical legs of respective edge-frames (3) and serve as pivot loops to allow the container (C) to pivotally move to a collapsed position when the bottom wall is upturned, and McConnell merely describes a non-collapsible dishwasher enclosure assembly (11).

Accordingly, for at least the reasons set forth above, Claim 1 is submitted to be patentable over Sloane in view of McConnell.

Claims 2-5 depend, directly or indirectly, from independent Claim 1. When the recitations of Claims 2-5 are considered in combination with the recitations of Claim 1, Applicant submits that dependent Claims 2 and 5 likewise are patentable over Sloane in view of McConnell.

For at least the reasons set forth above, Applicant respectfully requests that the Section 103 rejection of Claims 2-5 be withdrawn.

The rejection of Claims 6, 7 and 9-20 under 35 U.S.C. § 103(a) as being unpatentable over Sloane in view of McConnell, and further in view of U.S. Patent No. 4,834,125 to Insalaco (hereinafter referred to as "Insalaco") is respectfully traversed.

Sloane and McConnell are described above. Insalaco describes a non-collapsible utensil basket (10) including hooks (28) to removably mount the basket (10) onto a front portion (30) of an upper dishwasher rack (12). Notably, Insalaco does not describe or suggest a slot defined in a side wall configured to receive a projection of the front wall such that the projection is movable within the slot to move the front wall with respect to the back wall.

Applicant respectfully submits that the Section 103 rejection of the presently pending claims is not proper rejections. As is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. None of Sloane, McConnell and Insalaco, considered alone or in combination, describes or suggests the claimed combination. Further, contrary to the Examiner's allegations, Applicant respectfully submits that it would not be obvious to one skilled in the art to combine Sloane, McConnell and Insalaco, because there is no motivation to combine the references suggested in the art. Moreover, the Examiner has not pointed to any prior art that teaches or suggests to combine the disclosures, other than Applicant's own teaching.

As the Federal Circuit has recognized, obviousness is not established merely by combining references having different individual elements of pending claims. Ex parte Levengood, 28 U.S.P.Q.2d 1300 (Bd. Pat. App. & Inter. 1993). MPEP 2143.01. Rather, some suggestion to combine such references and a reasonable expectation of success must both be found in the prior art, and not based on Applicants' disclosure. In re Vaeck, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991). In the present case, neither a suggestion nor motivation to combine the prior art disclosures, or any reasonable expectation of success has been shown.

Further, it is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the cited art so that the claimed invention is rendered obvious. Specifically, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the art to deprecate the claimed invention. Further, it is impermissible to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. The present Section 103 rejection is based on a combination of teachings selected in an attempt to arrive at the claimed invention. Since there is no teaching or suggestion in the cited art for the combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for this reason alone, Applicant requests that the Section 103 rejection be withdrawn.

Claim 1 is recited above. No combination of Sloane, McConnell and Insalaco describes or suggests a dishwasher rack basket assembly, as recited in Claim 1. More specifically, no combination of Sloane, McConnell and Insalaco describes or suggests a dishwasher rack basket having a collapsible basket including side walls defining at least one slot extending between a front wall end and a back wall end, and at least one projecting slide portion of the front wall slidably positioned within a corresponding slot and moveable within the corresponding slot such that the front wall moves with respect to the back wall along a transverse axis substantially perpendicular to a longitudinal axis of the basket to position and transform the basket between a first size and a second size, as required by Applicant's claimed invention. Rather, Sloane merely describes end-loops (1a) that engage vertical legs of respective edge-frames (3) and serve as pivot loops to allow the container (C) to pivotally move to a collapsed position when the bottom wall is upturned, McConnell merely describes a non-collapsible dishwasher enclosure assembly (11), and Insalaco merely describes a non-collapsible basket (10).

Accordingly, for at least the reasons set forth above, Claim 1 is submitted to be patentable over Sloane in view of McConnell, and further in view of Insalaco.

Claims 6 and 7 depend directly from independent Claim 1. When the recitations of Claim 6 and 7 are considered in combination with the recitations of Claim 1, Applicant submits that dependent Claims 6 and 7 likewise are patentable over Sloane in view of McConnell, and further in view of Insalaco.

Claim 9 recites a rack assembly for a dishwasher machine including "a dish rack for retaining items to be washed; a collapsible basket assembly removably attached to said rack, said basket assembly comprising: a plurality of longitudinal walls having a first length, said longitudinal walls comprising a back wall and a front wall including at least one projecting slide portion, said front wall substantially parallel to said back wall and to a longitudinal axis of said collapsible basket; a plurality of lateral walls connecting said back wall to said front wall, each of said lateral walls having a second length and being pivotably attached to at least one of said longitudinal walls, each of said lateral walls comprising: a front wall end; a back wall end opposite said front wall end; and at least one slot extending between said front wall end and said back wall end, said at least one projecting slide portion slidably positioned within a corresponding slot of said at least one slot and moveable within said corresponding

slot such that said front wall moves with respect to said back wall along a transverse axis substantially perpendicular to said longitudinal axis to position and transform said basket assembly between a first size and a second size.”

Sloane, McConnell and Insalaco are described above. No combination of Sloane, McConnell and Insalaco describes or suggests a rack assembly, as recited in Claim 9. More specifically, no combination of Sloane, McConnell and Insalaco describes or suggests a rack assembly having lateral walls defining at least one slot extending between a front wall end and a back wall end, and at least one projecting slide portion slidably positioned within a corresponding slot and moveable within the corresponding slot such that the front wall moves with respect to the back wall along a transverse axis substantially perpendicular to the longitudinal axis to position and transform said basket assembly between a first size and a second size, as required by Applicant’s claimed invention. Rather, Sloane merely describes end-loops (1a) that engage vertical legs of respective edge-frames (3) and serve as pivot loops to allow the container (C) to pivotally move to a collapsed position when the bottom wall is upturned, McConnell merely describes a non-collapsible dishwasher enclosure assembly (11), and Insalaco merely describes a non-collapsible basket (10).

Accordingly, for at least the reasons set forth above, Claim 9 is submitted to be patentable over Sloane in view of McConnell, and further in view of Insalaco.

Claims 10-16 depend, directly or indirectly, from independent Claim 9. When the recitations of Claim 10-16 are considered in combination with the recitations of Claim 9, Applicant submits that dependent Claims 10-16 likewise are patentable over Sloane in view of McConnell, and further in view of Insalaco.

Claim 17 recites a dishwasher including “a cabinet including an interiorly disposed washing chamber; a dish rack disposed in said washing chamber; and at least one basket assembly collapsible between a first size and a second size having a generally rectangular cross section and removably attached to said rack, said at least one basket assembly comprising: a pair of spaced apart elongate walls comprising a back wall and a front wall including at least one projecting slide portion, said front wall substantially parallel to said back wall and to a longitudinal axis of said collapsible basket; a pair of spaced apart end walls movably coupled to said pair of spaced apart elongate walls to connect said back wall

to said front wall, each of said end walls comprising: a front wall end; a back wall end opposite said front wall end; and at least one slot extending between said front wall end and said back wall end, said at least one projecting slide portion slidably positioned within a corresponding slot of said at least one slot and moveable within said corresponding slot such that said front wall moves with respect to said back wall along a transverse axis substantially perpendicular to said longitudinal axis to position and transform said basket assembly between said first size and said second size; a bottom wall pivotably coupled to at least one of said elongate walls, such that said bottom wall is rotatable between a first position and a second position; a lid pivotably coupled to at least one of said elongate walls; and a knob positioned on at least one of said elongate walls.”

Sloane, McConnell and Insalaco are described above. No combination of Sloane, McConnell and Insalaco describes or suggests a dishwasher, as recited in Claim 17. More specifically, no combination of Sloane, McConnell and Insalaco describes or suggests a dishwasher having at least one collapsible basket assembly including at least one projecting front wall slide portion slidably positioned within a corresponding slot defined within each end wall and extending between the front wall end and the back wall end, wherein the at least one projecting slide portion is movable within the corresponding slot such that the front wall moves with respect to the back wall along a transverse axis substantially perpendicular to a longitudinal axis of the basket assembly, as required by Applicant’s claimed invention. Rather, Sloane merely describes end-loops (1a) that engage vertical legs of respective edge-frames (3) and serve as pivot loops to allow the container (C) to pivotally move to a collapsed position when the bottom wall is upturned, McConnell merely describes a non-collapsible dishwasher enclosure assembly (11), and Insalaco merely describes a non-collapsible basket (10).

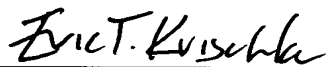
Accordingly, for at least the reasons set forth above, Claim 17 is submitted to be patentable over Sloane in view of McConnell, and further in view of Insalaco.

Claims 18-20 depend directly from independent Claim 17. When the recitations of Claim 18-20 are considered in combination with the recitations of Claim 17, Applicant submits that dependent Claims 18-20 likewise are patentable over Sloane in view of McConnell, and further in view of Insalaco.

For at least the reasons set forth above, Applicant respectfully requests that the Section 103 rejection of Claims 6, 7 and 9-20 be withdrawn.

In view of the foregoing amendment and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully submitted,



Eric T. Krischke
Registration No.: 42,769
ARMSTRONG TEASDALE LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102-2740
(314) 621-5070